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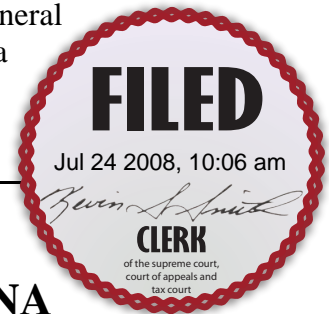
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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER SCRUGGS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0712-CR-703

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick Murphy, Commissioner
Cause No. 49G23-0704-FA-62005

July 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Christopher Scruggs appeals his convictions for class A felony possession of cocaine, class C felony possession of cocaine and a firearm, and class A misdemeanor possession of marijuana. We affirm.

Issues

- I. Did the trial court abuse its discretion by admitting evidence obtained pursuant to a search warrant?
- II. Did the trial court abuse its discretion by admitting evidence seized during warrantless searches incident to arrest?
- III. Is the evidence sufficient to sustain Scruggs's conviction for class A felony possession of cocaine within 1000 feet of a family housing complex?

Facts and Procedural History

On April 11, 2007, Indianapolis Police Department officers were dispatched to the Always Inn Motel in Indianapolis. They had received a report that Alicia Dismore, who had an outstanding warrant for her arrest, was staying in Room 312. Three officers went to Room 312 and knocked on the door. After several minutes, the officers saw a man later identified as Scruggs look out the window at them. Eventually, Scruggs opened the door. The officers asked Scruggs if Alicia Dismore was in the room, and he replied that she was not. The officers requested permission to search the room to verify that Dismore was not there, and Scruggs allowed them to come in.

As the officers entered the room, Scruggs walked over and sat down on the bed. Three women were in the room as well. Police questioned the women and determined that none of them was Alicia Dismore. Then, one officer noticed that the bed's mattress was off

kilter. Upon further inspection, police discovered Dismore hiding under the mattress. Officer Heidi Wise handcuffed Dismore and led her to one of two chairs in the room. Before allowing her to sit down, Officer Wise checked the chair for weapons and discovered a digital scale underneath the seat cushion.

As their investigation continued, police discovered that two other women in the room had outstanding warrants. Officer Wise handcuffed one of these women and led her to the other chair. Before directing her to sit down, Officer Wise searched the chair and discovered a baggie of what appeared to be marijuana underneath the seat cushion. Also, Officer Wise noticed marijuana or cocaine in plain sight on the table in the motel room.

Indianapolis Police Department Narcotics Unit Detective Joshua Harpe soon arrived on the scene. Based on the information given to him by Officer Wise, Detective Harpe prepared an affidavit for probable cause to obtain a search warrant. That same day, Detective Harpe obtained a search warrant for the room. During the officers' execution of the warrant, they discovered a large quantity of cocaine and a handgun. Detective Harpe Mirandized Scruggs, who admitted that he was dealing cocaine out of the motel room and that he used the gun for protection. He claimed that the marijuana was solely for his personal use, however. When Scruggs was searched incident to his arrest, the officers found \$1600 on his person.

On April 12, 2007, the State charged Scruggs with class A felony dealing in cocaine, class A felony possession of cocaine within 1000 feet of a family housing complex, class C felony possession of cocaine and a firearm, and class A misdemeanor possession of marijuana. On July 27, 2007, Scruggs filed a motion to suppress the evidence recovered

from his motel room. Following a hearing on the motion, the trial court denied it on August 9, 2007. A jury trial was held on October 30, 2007. The jury was unable to reach a verdict as to the charge of class A felony dealing in cocaine but found Scruggs guilty of the other three charges. Scruggs now appeals.

Discussion and Decision

I. Search Warrant

First, Scruggs claims that the trial court erred in admitting evidence police obtained from his motel room pursuant to a search warrant. We afford great deference to the evidentiary rulings of a trial court and reverse only upon a showing of an abuse of discretion. *Richard v. State*, 820 N.E.2d 749, 753 (Ind. Ct. App. 2005), *trans. denied, cert. denied* (2006). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

Scruggs specifically alleges that the search warrant was invalid and that therefore the search amounted to an unreasonable search and seizure in violation of Article 1, Section 11 of the Indiana Constitution, which states, in relevant part, “[N]o warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.” The statutory basis for Scruggs’s assertion is Indiana Code Section 35-33-5-2(a), which provides in relevant part that

no warrant for search or arrest shall be issued *until there is filed with the judge an affidavit:*

(1) particularly describing:

(A) the house or place to be searched and the things to be searched for;

or

(B) particularly describing the person to be arrested;

- (2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:
 - (A) the things as are to be searched for are there concealed; or
 - (B) the person to be arrested committed the offense; and
- (3) setting forth the facts then in knowledge of the affiant or information based on hearsay, constituting the probable cause.

(Emphasis added.)

Scruggs contends that the search warrant in this case was invalid because Detective Harpe failed to file the probable cause affidavit with the judge at the time that the warrant was issued. He notes that the affidavit and warrant were not time-stamped by the issuing judge's court until June 13, 2007. Pursuant to longstanding Indiana law, merely exhibiting an affidavit to the judge or executing it before him is not a "filing" of the affidavit. *Thompson v. State*, 190 Ind. 363, 363 130 N.E.412, 413, (1921). "Filing consists of the delivery of the paper to the proper officer for the purpose of being kept on file by him in the proper place." *Id.* Our supreme court has noted that the judge is the "proper officer" for the filing of an affidavit for a search warrant. *Wilson v. State*, 263 Ind. 469, 480, 333 N.E.2d 755, 761 (1975).

In arguing that the affidavit in this case was not properly filed, Scruggs primarily relies upon *State v. Rucker*, 861 N.E.2d 1240 (Ind. Ct. App. 2007), *trans. denied*, a case decided by another panel of this Court. In *Rucker*, a police officer prepared and presented a probable cause affidavit to the trial judge, who then issued a search warrant. The officer did not leave the affidavit with the judge, and the affidavit and warrant were not filed with the clerk of court until fifteen days after the search was conducted. On appeal, the State argued that the officer's failure to file the affidavit with the judge "did not affect any important

function of the warrant requirement, and Rucker has neither shown nor argued any resulting prejudice from the failure to file a timely copy of the affidavit and warrant.” *Id.* at 1242. This Court held that the officer’s violation of Indiana Code Section 35-33-5-2(a) meant that “the warrant was not supported by ‘oath or affirmation,’ as required by the constitutional provision against unreasonable search and seizure, and was illegal.” *Id.* (quoting *Thompson v. State*, 190 Ind. 363, 363, 130 N.E. 412, 413 (1921)).¹

The facts in *Rucker* are easily distinguishable from those in the instant case. In *Rucker*, the parties agreed that the officer failed to submit a copy of the probable cause affidavit and warrant to the judge prior to the issuance of the warrant. In this case, however, the probable cause affidavit signed by the trial court judge on April 11, 2007, includes the judge’s acknowledgement that “[a] copy of the probable cause and search warrant has been left [with the judge] at 11:40 p.m.” Defendant’s Exh. A. The judge also signed the search warrant, indicating a date and time of April 11, 2007, at 11:40 p.m. State’s Exh. 1.

As Scruggs himself acknowledges, this Court recently upheld a search warrant where the record disclosed that the officer left a copy of the probable cause affidavit with the judge when the warrant was issued, even though the officer did not file the affidavit with the clerk of court until fifteen days later. *See Moseby v. State*, 872 N.E.2d 189, 192 (Ind. Ct. App. 2007), *trans. denied*; *see also Scott v. State*, 883 N.E.2d 147, 153 (Ind. Ct. App. 2008)

¹ In *Thompson*, our supreme court held that “merely exhibiting an affidavit to the judge, or executing it before him, is not a ‘filing’ of the affidavit with the judge.” *Id.*, 190 Ind. 363, 363, 130 N.E. 412, 413. The *Rucker* court acknowledged, however, that exceptions have been made to the *Thompson* rule. *See, e.g., Bowles v. State*, 820 N.E.2d 739, 746 (Ind. Ct. App. 2005) (where detective filed affidavit and warrant the day after performing the search, detective “substantially complied” with Ind. Code § 35-33-5-2(a)), *trans. denied*; *but see State v. Mason*, 829 N.E.2d 1010, 1021 (Ind. Ct. App. 2005) (including statement of disapproval in

(probable cause affidavit was properly filed where it was left with the judge when the search warrant was issued). Because the record in this case also shows that Detective Harpe left the probable cause affidavit with the judge when the warrant was issued, the trial court did not abuse its discretion in admitting the evidence seized pursuant to the warrant.

II. Searches Incident to Arrest

Next Scruggs claims that the trial court abused its discretion in admitting evidence recovered from Officer Wise's warrantless searches of two chairs in the motel room. Generally, a judicially-issued search warrant is a condition precedent to a lawful search. *Culpepper v. State*, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996), *trans. denied* (1998). One exception to the warrant requirement is a search incident to a lawful arrest. *Id.* In 1969, the U.S. Supreme Court held that "[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape." *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Likewise, the "area into which an arrestee might reach in order to grab a weapon or evidentiary items" may also be searched. *Id.* at 764.

As discussed above, police discovered five persons inside the motel room, three of whom had outstanding warrants. In the midst of what was likely a chaotic scene, Officer Wise first handcuffed Dismore, patted her down for weapons and drugs, and led her to a chair in the room. Before seating Dismore, Officer Wise searched the chair, including underneath the cushion, "for weapons to make sure she couldn't hurt me or anyone else[.]"

dicta where detective failed to file probable cause affidavit for twenty-eight days after issuance of search warrant and "delay was unnecessary").

Tr. at 49. Officer Wise happened to find a digital scale underneath the cushion. After a second woman's warrant was confirmed, Officer Wise handcuffed her, searched her person, and then led her to a second chair in the room. Again, she searched the chair for weapons before seating the woman, and she discovered a baggie containing what appeared to be marijuana underneath the cushion.

Scruggs argues that Officer Wise purposely and unnecessarily led the women to the chairs in order to create a reason to search a larger area of the motel room without a warrant. Scruggs claims that “[t]he handcuffed arrestees could have been taken just outside the room to wait, sat on the edge of one of the beds in the room, or taken to one of the officers’ vehicles.” Appellant’s Br. at 11-12. Regardless of what the officers *could* have done with the arrestees, we cannot conclude on this record that Officer Wise’s decision to seat two of them in chairs within the motel room was made for the purpose of widening the warrantless search. The cases cited by Scruggs more clearly illustrate situations where police deliberately manipulated arrest scenes to justify expanding incident-to-arrest searches. *See U.S. v. Perea*, 986 F.2d 633, 642 (2nd Cir. 1993) (invalidating search of a duffel bag incident to arrest, where bag was first removed by police from defendant’s car trunk and placed near defendant); *see also U.S. v. Wright*, 577 F.2d 378, 381 (6th Cir. 1978) (invalidating search of luggage incident to arrest where officer first placed luggage near defendant).

Here, Officer Wise searched areas of the motel room within the immediate vicinity of the arrestees after they were moved to a more restrictive location within the room. The facts do not lead us to the conclusion that Officer Wise’s purpose in seating these arrestees was merely to simulate circumstances that would permit her to search the chairs without a

warrant. In sum, the trial court did not abuse its discretion in determining that the warrantless searches in this case were valid and that the evidence produced from those searches was admissible.

III. Sufficiency of the Evidence

Finally, Scruggs argues that the evidence is insufficient to sustain his conviction for possession of cocaine within 1000 feet of a family housing complex. He claims that the State failed to prove that the Always Inn was a “family housing complex,” which our legislature defines in part as “a building or series of buildings ... that is operated as a hotel or motel.” *See* Ind. Code § 35-41-1-10.5. “‘Hotels and motels’ means buildings or structures kept, maintained, used, advertised, or held out to the public as inns or places where sleeping accommodations are furnished for hire for transient guests.” Ind. Code § 22-11-18-1. The gist of his argument is that the jury heard conflicting evidence on this point.

It is well established that when a defendant challenges the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We will affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Prickett v. State*, 856 N.E.2d 1203, 1206 (Ind. 2006). We consider conflicting evidence in the light most favorable to the verdict. *Id.*

Scruggs points to evidence which he says suggests that the Inn did not provide accommodations to transient guests, such as his own testimony that he “was living” in Room 312 and that he and Dismore had been renting the room on a weekly basis, and the

prosecutor's reference to Room 312 as an "apartment." Tr. at 45, 189. In response, the State cites other evidence, namely Detective Harpe's testimony that he was familiar with the Always Inn as a motel where people rent rooms, and Scruggs's testimony that he had been living in Room 312 for only three weeks at the time of his arrest.

In light of the above, we conclude that the evidence is sufficient to sustain Scruggs's conviction for possession of cocaine within 1000 feet of a family housing complex.²

Affirmed.

BARNES, J., and BRADFORD, J., concur.

² In its closing argument, the State argued that the Always Inn was a hotel or motel as contemplated in Indiana Code Section 35-41-1-10.5. We note, however, that this statute also designates "a building or series of buildings ... that is operated as an apartment complex" to be a "family housing complex." *Id.* The basis for Scruggs's insufficiency argument is that the State failed to prove that the Always Inn was a hotel or motel that provided accommodations to "transient guests." Rather, he contends that he considered the Inn to be his "residence." Appellant's Br. at 13. By making this argument, Scruggs in essence concedes that the Always Inn falls within the statutory definition of "family housing complex"—if not as a hotel or motel, then as an apartment complex. Appellant's Br. at 13; *see* Ind. Code § 6-1.1-20.6-1 ("apartment complex" means real property consisting of at least five (5) units that are regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more.")